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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,629	04/25/2005	Keld Lauridsen	298-282	9304

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DILWORTH & BARRESE, LLP
333 EARLE OVINGTON BLVD.
SUITE 702
UNIONDALE, NY 11553

EXAMINER	
PIZIALI, ANDREW T	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
03/05/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/532,629	LAURIDSEN ET AL.	
	Examiner	Art Unit	
	Andrew T. Piziali	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 December 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16 and 18-43* is/are pending in the application.

4a) Of the above claim(s) *5-7,20 and 27-36* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,8-16,18,19,21-26 and 37-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *25 April 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/26/2007 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-4, 8-16, 18, 19, 21-26 and 37-43 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

The specification is silent regarding a multilayer composite including at least one layer in which a blend of an elastic polymer and a non-elastic polymer composed of fibers or filaments is contained. It is noted that the word "blend" is not in the specification and the specification does not refer to a multilayer composite including a blend equivalent.

The specification is also silent regarding a homogeneous fiber and filament mix in which a portion of the fibers is made from an elastic polymer and a portion is made from a non-elastic polymer. The specification is silent regarding a portion made from a non-elastic polymer.

The specification is also silent regarding a majority of the fibers or filaments in said layer or mix being drawn and aligned in a direction under the application of heat which extends transversely to the direction in which the nonwoven material is elastic. The specification does not mention drawing the fibers or filaments. Rather, the specification refers to drawing the nonwoven material.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-4, 8-16, 18, 19, 21-26 and 37-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1-4, 8-16, 18, 19, 21-26 and 37-43, the phrase "a blend of an elastic polymer and a non-elastic polymer composed of fibers or filaments" is indefinite. It is not clear if the applicant is claiming an elastic polymer and non-elastic polymer blend wherein said blend is composed of fibers or filaments or if the applicant is claiming a blend comprising elastic polymer fibers or filaments and non-elastic polymer fiber or filaments.

Regarding claim 16, the phrase "having flow properties with respect to the rheological and viscosity properties as flow properties of polypropylene" is indefinite. It is not clear what is being claimed.

Regarding claim 25, the claim recites the limitation "needle nonwoven/spunlaced product or needle nonwoven together with elastic meltblown layers" in lines 2 to 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1-4, 8-14, 16, 21-23 and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,057,024 to Mleziva in view of USPN 5,114,781 to Morman.

Mleziva discloses a nonwoven material having an elastic property aligned in one direction (see entire document including column 2, lines 13-45), comprising: one multilayer composite including at least one layer in which a blend of an elastic polymer and a non-elastic polymer composed of fibers or filaments is contained (column 8, line 44 through column 9, line 13).

Mleziva does not appear to mention drawing and aligning the fibers under the application of heat, but Morman discloses that it is known in the nonwoven elastic composite art to drawn the fibers of the outer layers of a sandwich nonwoven elastic composite to provide the composite with reversibly necked material properties (see entire document including column 3, lines 25-41 and column 4, line 34 through column 5, line 35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to drawn one or more of the outer (extensible) layers under the application of heat, motivated by a desire to give the outer layers

reversible necked material properties. It is noted that the current specification teaches that drawing under the application of heat results in the alignment of the fibers (paragraph bridging pages 8 and 9 of the specification).

Regarding claim 2, the multilayer composite may contain elastic meltblown fibers and spunbond fibers (column 7, lines 3-16 and column 8, lines 22-32).

Regarding claim 3, the elastic meltblown fibers may contain bicomponent fibers (column 15, lines 18-27).

Regarding claim 4, the spunbond fibers may be inelastic (column 2, lines 13-24).

Regarding claim 8, the meltblown layer may be arranged between two spunbond layers (column 8, lines 22-32).

Regarding claims 9 and 10, the meltblown layer can be considered a liquid barrier layer or a particle retention layer, before or after stretching, because the meltblown layer would impede liquid or particles from passing.

Regarding claims 11-14, 38-40, considering that the nonwoven material structure is identical or substantially identical to the claimed nonwoven material structure, it would inherently possess the claimed characteristics.

The Patent and Trademark Office can require applicants to prove that prior art products do not necessarily or inherently possess characteristics of claimed products where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes; burden of proof is on applicants where rejection based on inherency under 35 U.S.C. § 102 or on prima facie obviousness under 35 U.S.C. § 103, jointly or alternatively, and Patent and Trademark Office's inability to manufacture products or to

obtain and compare prior art products evidences fairness of this rejection, *In re Best, Bolton, and Shaw*, 195 USPQ 431 (CCPA 1977).

Regarding claim 16, since the elastic meltblown layer may comprise polypropylene (column 16, lines 3-20), the meltblown fiber may have similar flow properties as polypropylene.

Regarding claim 21, the nonwoven material may comprise spunbond polyolefin layers (column 8, lines 33-43).

Regarding claim 22, the layers inherently have a different design because one is spunbond (continuous fibers) and one is meltblown (staple fibers).

Regarding claim 23, the layers may be bonded to one another by thermal bonding (column 9, lines 15-30).

Regarding claim 37, the meltblown layer may be arranged between two spunbond layers in the order of SMS (column 8, lines 22-32).

8. Claims 9, 10, 14, 15, 26 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,057,024 to Mleziva in view of USPN 5,114,781 to Morman as applied to claims 1-4, 8-14, 16, 21-23 and 37-40 above, and further in view of USPN 4,879,170 to Radwanski.

Regarding claims 9 and 10, Radwanski discloses that it is known in the art to make a product a barrier to liquid (see entire document including paragraph bridging columns 17 and 18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the product impede liquid, because some applications require a liquid barrier.

Regarding claim 14, Radwanski discloses that it is known in the art to make a product a breathable (see entire document including paragraph bridging columns 17 and 18). It would

have been obvious to one having ordinary skill in the art at the time the invention was made to make the product breathable, because some applications require breathability.

Regarding claim 15, Mleziva does not appear to mention the nonwoven material being hydrophilic, but Radwanski discloses that it is known in the art to coat fibers with a hydrophilic finish to make the product more absorbent (paragraph bridging columns 17 and 18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to coat the fibers with a hydrophilic finish, motivated by a desire to make the product more absorbent.

Regarding claims 26 and 43, Mleziva is silent with regards to specific meltblown fiber thickness, therefore, it would have been necessary and thus obvious to look to the prior art for conventional meltblown fiber thickness. Radwanski provides this conventional teaching showing that it is known in the art to use fibers with a denier of 1.35 or less (paragraph bridging columns 11 and 12). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the meltblown fibers with a thickness of less than 1.35 denier, such as 0.001 to 0.5 denier, motivated by the expectation of successfully practicing the invention of Mleziva.

9. Claims 18, 19, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,057,024 to Mleziva in view of USPN 5,114,781 to Morman as applied to claims 1-4, 8-14, 16, 21-23 and 37-40 above, and further in view of USPN 4,663,220 to Wisneski.

Mleziva discloses that the meltblown fibers may be composed of KRATON and elastic polypropylene (column 15, line 18 through column 16, line 20), but does not appear to mention the specific weight percentages. Wisneski discloses that it is known in the art to use the claimed

KRATON and polypropylene weight percentages (see entire document including column 4, line 23 through column 5, line 20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the meltblown fibers from any suitable KRATON/polypropylene weight percentage, such as taught by Wisneski, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics. The examiner takes Official Notice that anti-blocking agents are typically used in the art to improve flow properties.

Regarding claim 42, the meltblown fibers may be composed of a mettallocene-catalyzed copolymer of polyethylene (paragraph bridging columns 15 and 16).

10. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,057,024 to Mleziva in view of USPN 5,114,781 to Morman as applied to claims 1-4, 8-14, 16, 21-23 and 37-40 above, and further in view of anyone of USPN 6,663,584 to Griesbach or USPN 5,503,908 to Faass.

Mleziva is silent with regards to specific basis weights, therefore, it would have been necessary and thus obvious to look to the prior art for conventional basis weights. Griesbach and Faass each provide this conventional teaching showing that it is known in the art to use a nonwoven material with a basis weight of 10 to 500 gsm (see entire documents including column 10, lines 30-37 of Griesbach and column 12, lines 1-18 of Faass). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the nonwoven with a basis weight of 10 to 500 gsm, motivated by the expectation of successfully practicing the invention of Mleziva. Mleziva discloses that the elastic meltblown layers may amount to 5 to 50% of the nonwoven material (paragraph bridging columns 13 and 14).

Response to Arguments

11. Applicant's arguments have been considered but are moot in view of the new grounds of rejection.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T Piziali/
Primary Examiner, Art Unit 1794